IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**O R D E R**

Mangi Lal Vs. State of Rajasthan & Anr.

**S.B.CR.MISC. PETITION NO.585/2006**

DATE OF ORDER :: November 13, 2006

**PRESENT**

**HON'BLE MR.JUSTICE H.R.PANWAR**

Mr. I.R.Choudhary, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor.
Mr. Suresh Kumbhat, for non-petitioner No.2.

**BY THE COURT:**

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 18.4.2006 passed by the Judicial Magistrate, Marwar Junction (for short 'the trial court' hereinafter) in Crime Report No.40/2006, whereby on production of Santosh, wife of non-petitioner No.2 and upon hearing and knowing her desire, the trial court allowed her to go with her husband. The S.H.O. was directed to safely take her to her husband at village Siryari and leave her at the custody of her husband. Aggrieved by the order impugned, the petitioner, who is father of Santosh, filed the instant petition.

I have heard learned counsel for the parties.

Smt. Santosh is present in Court. She has stated that she was married four years ago to non-petitioner No.2 Chimna Ram and since the date of her marriage with Chimna Ram, she is legally wedded wife of non-petitioner No.2 Chimna Ram and, therefore, she at her own, went with Chimna Ram and has been living with him as his wife. She made a statement under section 164 Cr.P.C. before the Judicial Magistrate, Sojat on 25.4.2006 stating therein that she is 20 years of age and she studied in the school, however, subsequently, discontinued the study. She was married to non-petitioner No.2 four years ago on the festival known as "Akhateej". However, when she came to know that her father, the petitioner, instead of sending her with her husband, is planning to marry her with someone else on account of some dispute between her father and her father-in-law. The moment she came to know the design of her father of sending her with someone else, she contacted her husband and went with her husband at her own apprehending that in case she continued to stay with her father she was likely to be sold to someone else for a sum of Rs.3,00,000/-. Be that as it may, in her statement, she has categorically stated that she went with her husband with her freewill and has been living at Hyderabad where her husband is running a shop. She expressed her desire to live with her husband Chimna Ram. Apprehending that if she is handed over

to her parents, she is likely to be sold to some else or murdered.

Learned Public Prosecutor has received the police investigation diary. Certain photographs of her marriage with non-petitioner No.2 have been placed on record of the police investigation diary as also the counsel appearing for the non-petitioner No.2 has shown the album containing the photographs of marriage of Smt. Santosh with Chimna Ram, which according to Smt. Santosh was solemnized about four years ago.

Learned counsel for the petitioner submits that Santosh is minor, her date of birth as per school certificate is 20.8.1989 and, therefore, the trial court fell in error in giving custody of Santosh to non-petitioner No.2. The petitioner being the father of Santsh is entitled for the custody. Smt. Santosh is present in Court and she has categorically stated that she married to non-petitioner No.2 more than four years ago on "Akhateej" as per the Hindu Rites and non-petitioner No.2 is her husband with whom, she has been living for last more than seven months.

Keeping in view the statement of Smt. Santosh on oath as also the age stated by her in her statement before the Judicial Magistrate and the fact that there is prima facie evidence on police investigation diary that Smt. Santosh married to non-

petitioner No.2, in my view the trial court was justified in giving custody of Smt. Santosh to her husband. Whether Smt. Santosh is minor or not even if her age is below 18 years, yet after her marriage, non-petitioner No.2 her husband is the guardian. In the circumstances, therefore, it cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of any court warranting interference in the inherent jurisdiction.

The petition is, therefore, dismissed.

**[H.R.PANWAR],J.**

m.asif/-